

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEWAYNE TATUM,

Petitioner,

vs.

ISIDRO BACA, *et al.*,

Respondents.

3:13-cv-00640-LRH-WGC

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner has been released from the custody of the Nevada Department of Corrections.

Petitioner has filed a motion to proceed *in forma pauperis*. (ECF No. 1). Because the Court dismisses this action for failure to state a cognizable habeas corpus claim, the motion to proceed *in forma pauperis* is denied as moot.

Rule 4 of the Rules Governing § 2254 Cases requires the Court to make a preliminary review of each petition for writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the face of the petition . . . that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing 2254 Cases; *see also, Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

A federal court may only grant a petition for writ of habeas corpus if the petitioner can show that "he is in custody in violation of the Constitution" 28 U.S.C. § 2254(a). Federal habeas corpus law permits prisoners to challenge the validity of convictions under which they are "in custody." *See* 28 U.S.C. § 2254(a); *Maleng v. Cook*, 490 U.S. 488, 490, 109 S.Ct. 1923 (1989) (*per curiam*). A habeas petitioner is not "in custody" under a conviction after the sentence imposed for it

1 has fully expired. Petitioner is no longer in the custody of the Nevada Department of Corrections as
2 his sentence has expired. Petitioner's allegations appear to concern a due process claim stemming
3 from the adjudication of a prison disciplinary hearing. Plaintiff seeks monetary relief. Petitioner's
4 claims are not appropriate for habeas corpus relief. Challenges to the conditions of confinement are
5 more appropriately raised in civil rights action filed pursuant to 42 U.S.C. § 1983. *See Badea v.*
6 *Cox*, 931 F.2d 573, 574 (9th Cir. 1991); *Crawford v. Bell*, 599 F.2d at 891-92 (9th Cir. 1979).

7 **IT IS THEREFORE ORDERED** that petitioner's motion to proceed *in forma pauperis*
8 (ECF No. 1) is **DENIED AS MOOT**.

9 **IT IS FURTHER ORDERED** that the petition is **DISMISSED WITH PREJUDICE**.

10 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.

11 Dated this 3rd day of February, 2014.

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15 LARRY R. HICKS
16 UNITED STATES DISTRICT JUDGE
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